

FREDERICK COUNTY ETHICS COMMISSION

FREDERICK COUNTY, MARYLAND

OFFICE OF THE COUNTY ATTORNEY

Winchester Hall • 12 East Church Street • Frederick, Maryland 21701
301-600-1030 • FAX 301-600-1161 • TTY: Use Maryland Relay
www.co.frederick.md.us

COMMISSIONERS

Blaine R. Young
President

C. Paul Smith
Vice President

Billy Shreve

David P. Gray

Kirby Delauter

CHAIRMAN

Karl W. Bickel

FREDERICK COUNTY ETHICS COMMISSION

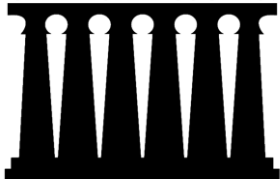
OPINION 12-02

INTRODUCTION

On December 2, 2011, the Ethics Commission received an ethics complaint against an employee who works at the Frederick County Animal Shelter. The complaint alleged that the employee is also the co-director of a private non-governmental organization¹ (the “private shelter organization”) that encourages persons to donate money to animal shelters and that the employee used the County Animal Shelter and County property to promote that organization. Three specific incidents are described in the complaint: (1) that the employee used her County title on an opinion article published by the Washington Times about how money donated to a national animal welfare charity is used, (2) that the employee used her County position to gain access to the County Animal Shelter to film a video on behalf of the private shelter organization, and (3) that the employee allowed her County title to be used on the private shelter organization’s web site.

After the complaint was filed, the Ethics Commission learned that the President of the private shelter organization had contacted the Board of County Commissioners and the County Manager in support of the employee. A person who helped create the private shelter organization also wrote to the Board of County Commissioners and the County Manager to provide information. Both letters were forwarded to the Ethics Commission. A national animal welfare charity, which has been the subject of criticism by the private shelter organization, also contacted the Board of County Commissioners and the County Manager. That letter was also forwarded to the Ethics Commission. The same national organization also provided a written submission to the Ethics Commission directly, providing documents in support of the ethics complaint.

CHARACTER COUNTS!



JOSEPHSON INSTITUTE OF ETHICSSM

TRUSTWORTHINESS • RESPECT
RESPONSIBILITY • FAIRNESS
CARING • CITIZENSHIP

CHARACTER COUNTS! and the Six Pillars of Character are service marks of the CHARACTER COUNTS! Coalition, a project of the Josephson Institute of Ethics.
www.charactercounts.org

¹ The private shelter organization is not affiliated with the County Animal Shelter. Its website states that the organization “is a 501(c)(3) non-profit charitable organization dedicated to fostering a broad base of support for America’s local pet shelters and humane societies.” Further it “work[s] with local shelters and others to educate Americans about the need to support local pet shelters, as well as address the misperception that national animal charities work locally.” The website states that it does not directly support or operate local pet shelters, but that it encourages others to do so. According to the employee, the private shelter organization provides services to 501(c)(3) organizations. As the County Animal Shelter is operated by the government and is not a 501(c)(3) organization under the Internal Revenue Code, the employee stated that the County Animal Shelter is not eligible to receive donations from the private shelter organization.

THE ETHICS ORDINANCE

Before reviewing the specific provisions of the Ethics Ordinance, it is always useful to keep in mind the purpose of the Ethics Ordinance, as stated in the Ordinance's introduction:

The Board of County Commissioners, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained. It is evident that this confidence and trust is eroded when the conduct of the county's business is subject to improper influence and even the appearance of improper influence. For the purpose of guarding against improper influence, the Board of County Commissioners enacts this law to set minimum standards for the conduct of county business.

The Ethics Ordinance contains the following conflict of interest provisions relevant to the complaint:²

§ 1-7.1-5. CONFLICTS OF INTEREST.

(D) *Employment and financial interest restrictions.*

- (1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

* * *

- (b) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

* * *

² These provisions are in the current Ethics Ordinance, which took effect on November 17, 2011. The prior Ethics Ordinance also made it a conflict of interest to hold any outside employment relationship that would impair an employee's impartiality or independence of judgment (Section 1-7.1-4(D)) or for an employee to use the prestige of his office for his own private gain or that of another (Section 1-7.1-4(H)). Although some of the conduct referenced in the complaint occurred while the former Ethics Ordinance was in effect, the findings of the Ethics Commission in this Opinion would be the same under either version of the Ordinance.

(G) *Use of prestige of office.*

- (1) An official or employee may not intentionally use the prestige of office or public position for the private gain of that official or employee or the private gain of another.

The Ethics Commission's role is to determine whether the Ethics Ordinance has been violated. Allegations that other County policies, such as those concerning the use of County property such as a telephone and a computer, were violated do not fall under the Ethics Ordinance and will not be addressed by the Commission.³

DISCUSSION AND FINDINGS

In reaching its decision, the Ethics Commission has considered all of the written materials it received in connection with the complaint. The Commission also met with the complainant, the employee who is the subject of the complaint, and the Director of the Division in which the employee works.

1. Washington Times article

On November 9, 2011, the Washington Times published in its "Commentary" section a written submission titled "Help a puppy, not a lobby: Needy pets benefit more from local shelters than animal-rights campaigns." As is evident from the title, the submission encouraged readers to donate money to local animal shelters rather than to a national organization that solicits donations primarily to promote animal welfare issues worldwide. The author of the commentary was identified as the employee. Her name and her position with the Frederick County Animal Control Division were published. The private animal shelter organization was not mentioned, nor was the employee's affiliation with that organization. This created the potential for readers of the commentary to be misled into believing that the County supported the opinions expressed in the article.

The employee advised the Ethics Commission that she did not personally submit the commentary to the newspaper and did not know that her title and employment by Frederick County would be published. The employee drafted much of the commentary and provided it to an individual associated with the private shelter organization. That individual, in turn, forwarded the commentary, which may have been further edited by others before it was forwarded, to the newspaper along with the name and title of the County employee. The employee stated that she was not

³ The complaint also requests that the Ethics Commission take a number of actions, such as conducting investigations into the employee's use of County equipment and the employee's recruitment by the private shelter organization and issuing a public statement to clarify that the County Animal Control Division does not support the private shelter organization. The Ethics Commission has no authority to take these actions.

compensated for writing the commentary or for other work she performed for the private shelter organization, but did state that she received payments from the individual who forwarded the article to the newspaper for consulting work she performed.

In light of the employee's explanation that she was not aware that the submission to the newspaper would use her County title or reference her employment with Frederick County and that she was not the person who actually submitted the article to the newspaper, the Ethics Commission cannot find that the use of the employee's title and County position in the commentary violated the Ethics Ordinance. In order to constitute a violation of Section 1-7.1-5(G)(1) of the Ethics Ordinance, there must be an *intentional* use of the prestige of one's public position for one's private gain or the private gain of another. While the complainant could not have known these facts when making her complaint, the information provided does not support a finding that the employee intended to have her title and County position referenced in the Washington Times commentary.

2. Filming at the Animal Shelter

As part of her work with the private shelter organization, the employee filmed a video at the County's Animal Shelter.⁴ The theme of the video was similar to that expressed in the written submission to the Washington Times. The employee appears in the video, but does not identify herself as a County employee. The employee did admit, however, that she failed to obtain the Division Director's permission to film the video. While the video was filmed in the shelter, the location of the shelter is not provided and it is not apparent in the video that the shelter is the Frederick County Animal Shelter. The filming did not take place when the employee was working in her County position and the employee was not directly compensated for making the video. The purpose of the video was to further the objectives of the private shelter organization and to encourage persons viewing the video to make donations to their local animal shelters.

The Ethics Commission finds that in filming the video at the Animal Shelter without the consent of her Division Director, the employee did violate Section 1-7.1-5(G)(1) of the Ethics Ordinance because the employee would not have had direct access to the shelter for the filming except for her position at the shelter.

⁴ The video was removed from the private shelter organization's website at the request of the Animal Control Division Director after he was contacted by the national organization criticized in the video.

3. Employment by the private shelter organization and identifying information about the employee appearing on that organization's website

When the complaint was filed, the employee was identified on the private shelter organization's website as the organization's co-director. Her name and photograph appeared on the website. In addition to identifying her as the co-director, the brief biographical summary described her as an employee of the Animal Control Division and listed her County title. This could have confused viewers of the website into thinking that the County supported the organization and its goals. The Ethics Commission finds that this listing of the employee's title and position constituted a use of the prestige of her office for another's private gain in violation of Section 1-7.1-5(G)(1) of the Ethics Ordinance.

It has also been asserted that the employee's work for the private shelter organization violated the provision in the Ethics Ordinance making it a conflict of interest for an employee to hold another employment relationship that would impair the employee's impartiality or independence of judgment. (Section 1-7.1-5(D)(1)(b)) Given the employee's statement that she was not directly compensated for her work with the private shelter organization, this raises a preliminary question as to whether the employee's work with the private shelter organization qualifies as an "employment relationship." The term "employment relationship" is not defined in the Ordinance. The State Ethics Commission, however, has been called upon to define that same term in the State Ethics Law's conflict of interest provisions on a number of occasions. The State Ethics Commission has consistently held that the absence of compensation does not by itself mean that an activity is not employment. This is particularly true when the service is on the governing body of an organization. (See, for example, State Ethics Commission Opinions 86-17, 84-28, 82-02 and 80-04.) As the County employee is a co-director of the private shelter organization, the Commission finds that her work with that organization qualifies as an "employment relationship" within the scope of Section 1-7.1-5(D)(1)(b) of the County's Ethics Ordinance, even if that work was uncompensated.

The Ethics Commission does not believe that a blanket prohibition precluding the employee from working with the private shelter organization is required. To avoid the appearance of impropriety and confusion to the public over the County's sponsorship of that organization's objectives, however, the employee's biographical information on the private shelter organization's website should not include either the employee's title or the fact that she is employed by a local animal shelter. Because the employee's duties for the County place her in a position to accept donations to the County Animal Shelter, the employee should not personally solicit or accept funds for the private shelter organization in order to avoid the appearance of a conflict of interest on her part.

The Commission wishes to thank the employee and the Animal Control Division Director for their cooperation with the Ethics Commission's investigation in to this complaint.

January 30, 2012
Date

/s/
Karl W. Bickel, Member

/s/
Paula C. Bell, Member

/s/
E. Donald Foster, Alternate Member

Ethics Commission member Hayden B. Duke recused himself from participation in the discussion and vote on this complaint.